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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

M.A(C) No. 588 of 2007

Appellant Insurer The New India Assurance Company Limited, through the Divisional Manager, The New India Assurance Company Ltd. Second Floor, Rama Trade Centre, Bus Stand Road, Bilaspur (Chhattisgarh)

Versus

RESPONDENTS Claimant

1 Santosh Yadav son of Pacharam Yadav, aged about 25 years, Resident of : through beside of Taj Kirana Stores, near Ravan Murti, Ravanbhatha, Supela, P.S. Supela, Bhilai, District Durg (C.G.)

2 Krishna Kumar Chandrakar son of J.L. Chandrakar, R/o village Mokhla, P.S. Aarang, District Raipur (C.G.)

3 Dr. Sandeep Jain, son of late M.C. Jain resident of Gudhiyaripara, Aarang, District Raipur (C.G.)

4. Kailash Kukreja son of Shri Gidmal Kukreja, aged 28 years, R/o Deepak Nagar, Durg (C.G.)

Misc. Appeal u/s 173 of the Motor Vehicles Act.

Appearance:

Shri Saurabh Sharma, counsel for the appellant.
Shri P. Diwakar, Sr. Advocate with Shri P.R. Patankar, Counsel for respondent No.1.
None for other respondents.

D.B: **Hon'ble Shri Justice L.C. Bhadoo, J &**
Hon'ble Shri Justice Sunil Kumar Sinha, J.

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मामला क्रमांक MACC - 588/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

ORAL ORDER
(21.08.2007)

L.C.Bhadoo, J.

Heard.

The Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, being aggrieved by the award dated 10th April 2007 passed by the Fourth Additional Motor Accidents Claims Tribunal, Durg in Claim Case No.103/2005 on the ground that the compensation amount, which has been awarded to the claimant is on the higher side. The Insurance Company has sought permission from the Tribunal under Section 170 of the Motor Vehicles Act to contest the claim on all grounds.

The brief facts necessary for disposal of this Claim Appeal are that the claimant – Santosh Yadav was working as a driver in Maruti Van bearing registration No.CG-04-ZP/2646. On the fateful day i.e. on 13/9/2003 the claimant was driving the Maruti Van and the said vehicle was insured with the present appellant – The New India Assurance Company. The claimant was driving the Maruti Van from Durg to Orissa. When the Maruti Van reached near village – Jhalkhamaria, ahead of Mahasamund, Minibus bearing registration No.CG.04-E/0223, driven by one Krishnakumar Chandrakar, dashed against the Maruti Van while driving the Minibus in a rash and negligent manner, as a result of which, the claimant sustained injuries on various parts of the body. He sustained injury on the right eye and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the patella of right leg was also fractured, as a result of which, claimant underwent surgery. The matter was reported in the Police Station, Mahasamund and an offence under Section 279, 337, 338 of IPC was registered. In consequence of the said accident, ultimately, the right eye of the claimant was removed. The claimant filed a claim case, claiming in all Rs.5,05,000/- under all heads.

The Tribunal after recording the evidence and after hearing learned counsel for the parties vide impugned award granted Rs.14,508/- against the medical expenses, Rs.25,000/- against pain, sufferings and mental agony and Rs.1,00,000/- against disability, disfiguration, social ostracism, inconvenience in daily activities and family needs, pain and sufferings in future due to removal of right eye. The Tribunal also held that the claimant was earning Rs.2000/- per month through his salary, Rs.50/- by way of Dearness Allowance and in all he was earning Rs.38,150/- (24,000 {2000 x 12} + 14,150) per year and by applying a multiplier of 18, loss of income was assessed to be Rs.6,86,700/-. The Tribunal further awarded interest @ 8% p.a. from the date of application i.e. 19/01/2004 and if the Insurance Company fails to pay the amount within the stipulated period, then the enhanced interest rate @ 9% was awarded.

Learned counsel for the appellant has not disputed the liability of the Company as also the amount of Rs.14,508/-, Rs.25000/- and Rs.1,00,000/-. He submitted that the amount of Daily Allowance, which has been assessed as Rs.14,150/- per year is not justified for the reason that in the first instance, no cogent and clear evidence has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

been adduced, in fact the claimant was receiving that amount. In alternative that amount was admissible to the claimant to meet his personal expenses, as and when he used to go outside of his headquarter with the Taxi, therefore, it cannot be assessed as a loss to the claimant. He further submitted that it is true that on account of loss of right eye, the claimant is not entitled to work as a Driver, but from his own evidence in para 7, he has admitted that he is running a Newspaper Agency, through which he is earning Rs.1000/- per month. Therefore, on account of the said accident, he has been deprived by Rs.1000/- per month as he is not able to work as Driver, by which he was earning Rs.2000/- per month, as has been assessed by the Tribunal.

On the other hand, learned counsel for respondent No.1 supported the award of the Tribunal and argued that the claimant has sustained 100% disability, therefore, he has not only been deprived from Rs.2000/- per month as also from Dearness Allowance.

Having heard learned counsel for the parties, we have perused the record, in which, the claimant himself in para 7 of his evidence has categorically admitted that after the accident, he is not entitled to drive the vehicle, therefore, he is running a Newspaper Agency, through which he is earning Rs.1000/- per month.

From the above evidence of the claimant, it is established that on account of accident and deprivation of driving, he has suffered a loss of Rs.1000/- per month, as he is earning Rs.1000/- through a Newspaper Agency. So far as claim of the claimant about Dearness

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Allowance is concerned, the same cannot be considered, as in fact, he used to earn that amount as and when he was required to take the vehicle outside the headquarter and that amount was being paid against the personal expenses being out of his house, therefore, that amount cannot be considered as loss to the claimant. Moreover, it is not necessary that his vehicle was going every day to the out stations and that cannot be treated as a permanent source of income. There is no evidence that the Maruti Van, which was being driven by the claimant, was registered as a Taxi and was running on Taxi permit issued by the R.T.O., in fact, it was a private vehicle.

In the matter of State of Haryana and another vs. Jasbir Kaur and others, (2003) 7 S.C.C. 484, the Apex Court held that it has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation "which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness and non-arbitrary. If it is not so it cannot be just.

Therefore, while assessing loss and compensation to be paid to the claimant, the ultimate object before the Tribunal is always that the compensation must be just, fair and reasonable and that should not be arbitrary or on the higher side, at the same time, that should not be a meagre amount.

Keeping this principle in mind and looking into the evidence of the claimant, who has stated that after his deprivation from the job of driving, he is running a Newspaper Agency, through which he is earning Rs.1000/- per month, we, without going into the correctness of his statement, are taking it as his earning per month. In view of this, this amount has to be deducted from what he was earning by doing the job of driving in order to arrive at a just, clear and reasonable

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

conclusion for entitlement of the compensation amount to the claimant.

Taking into account the loss and looking to the totality of the circumstance, we are of the view that the loss of earning per month should be assessed as Rs.1500/-per month looking to the nature of work, which was being done by the driver. Therefore, Rs.1500/- x 12 months, by applying a multiplier of 18, the total amount comes to Rs.3,24,000/-.

In the result, the appeal is partly allowed.

While maintaining the compensation amount awarded under other heads, the amount of loss of earning is reduced and modified to Rs.3,24,000/- in place of Rs.6,86,700/-

The Insurance Company is directed to deposit the modified amount as per this order within a period of 30 days from today, failing which, the claimant shall be entitled to interest @ 9% p.a. instead of 8% p.a.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Shyna

GRPRJ — FS/246— 2/2007 — 50,000.